

The regular monthly meeting of the City Planning Board was held on September 21, 2011, in the City Council Chambers, 37 Green Street, at 7:00 p.m.

Present at the meeting were Members Drypolcher, Lavers, Smith Myer, Hicks, Regan, Foss, Gross, and City Council Representative McClure. Mr. Henninger, Ms. Hebert, and Ms. Muir of the City Planning Division were also present, as was Ms. Aibel, the City's Associate Engineer.

At 7:02 PM a quorum was present, and the Chair called the meeting to order. The Chair welcomed the two new Planning Board Members, Richard Lavers and John Regan.

## **APPLICATIONS**

### **Conditional Use Permit Applications**

- 1. Application by Concord Country Club for a Conditional Use Permit pursuant to Section 28-4-3 (d), Certain Disturbances to Wetland Buffers of the Zoning Ordinance at Country Club Lane. (2011-0038)**

#### **Determination of Completeness**

Ms. Hebert reported that the application is complete and ready for public hearing.

Mr. Gross moved and Ms. Foss seconded that the Planning Board determine this application to be complete and open the hearing. Motion carried.

#### **Public Hearing**

Ms. Hebert reported that the Concord Country Club, located on Country Club Lane off of Mountain Road, is proposing to disturb a small area of wetland buffer for the reconstruction of the white and blue golf tee boxes at the 12<sup>th</sup> hole and has filed a Condition Use Permit pursuant to Article 28-4-3 (d) of the Zoning Ordinance.

Ms. Hebert explained that the project involves regarding the area around the blue and white tee boxes at the 12<sup>th</sup> hole. The tee boxes are separated by a small wetland. The reconstruction will have minor impacts to the wetland buffer, but there are no impacts proposed to the jurisdictional wetland area. The side slopes of the tee boxes that are within the wetland buffer will be seeded with a fescue and wetland restoration mix and will not be mowed. All seeded slopes will be mulched and covered with landscape woven turf matting. Ms. Hebert stated that this work is being done to maintain the standards required for their golf course accreditation.

Ms. Hebert stated that the Conservation Commission reviewed the Conditional Use Permit request at their September 14<sup>th</sup> meeting, and did not have any objections to the project.

#### **Deliberations and Action on Application**

Mr. Gross moved to grant the Conditional Use Permit of the Concord Country Club to allow for the reconstruction of the blue and white tee boxes at the 12<sup>th</sup> hole, as presented in the application prepared by Oak Hill Environmental services. Ms. Smith Meyer seconded. Motion carried.

## Major Site Plan Applications

### **2. Application by The Bindery Redevelopment, LLC, on behalf of the Duprey Center, LLC, and the New Hampshire Bindery, Inc., for a site plan of property located at 43 and 45 South Main Street. (2011-0034)**

#### Public Hearing

Ms. Hebert reported that this application was determined to be complete at the August 24<sup>th</sup> Planning Board meeting.

Ms. Hebert stated that the Bindery Redevelopment, LLC is proposing to construct a 69,360 square foot office and retail building at 43 and 45 South Main Street. This is immediately adjacent to the Sanel Block Redevelopment project that the Board previously reviewed. The project includes the Bindery Building and a retail and office building. The applicant is proposing to demolish these buildings and redevelop the property for the new office building, together with some drainage, site, and landscaping improvements. The applicant is also proposing a small loading area off a 15 foot pass-way that is currently owned by the State of New Hampshire, and the applicant will need to acquire rights to use this pass-way.

The applicant has also applied for a Conditional Use Permit pursuant to Article 28-5-48 of the Concord Zoning Ordinance, for relief from the “build to line” in the Central Business Performance District to allow for the construction of the widened sidewalk. New structures in the Central Business Performance District must be constructed at the front lot line or right-of-way, unless a Conditional Use Permit is approved for the construction of a public plaza, widened sidewalk or other amenity that enhances the streetscape of downtown Concord. The building has been setback approximately 10-13 feet from the South Main Street right-of-way to allow for the widened sidewalk. This setback is consistent with the adjacent buildings to the north and south.

Mr. Hebert explained that the property is located in the Central Business Performance District (CBP). To allow for flexibility in the design of the site and to encourage redevelopment within the district, new construction does not need to provide off-street parking, off-street loading areas, or off-street loading and storage areas for refuse containers. The district also allows for 100% maximum lot coverage and does not have standards for rear and side building setbacks from the property line. Article 28-5-48 also includes a requirement that a minimum of 60% of the ground level occupancy needs to be comprised of uses that include the sale of goods and provision of services and entertainment to customers who come to the building. The project satisfies this requirement and will be occupied by office and retail uses.

The New Hampshire Bindery building and the adjacent retail building to the south will be demolished to prepare for the redevelopment of the site. In a study prepared by the Heritage Commission, the Bindery was determined to be eligible for listing on the National Register of Historic buildings. The applicant has filed a Demolition Permit with the City and the Demolition Review Committee has set a public hearing for September 29th to receive testimony on the demolition.

The City Administration is proposing a change to the impact fee ordinance that would exempt this project from paying the transportation impact fees, but the City Council has not yet approved the revision to the ordinance and the payment of impact fees has been included in the recommendation for conditional approval.

Ms. Hebert reported that all the proposed utilities will be underground; the site will be served by municipal water and sewer; and the building will also be equipped with sprinklers for fire suppression. She stated that the overall amount of impervious surface on the property is being reduced and a stormwater drainage analysis has been submitted to demonstrate that the City's existing systems on South Main Street can handle additional drainage from the site. The Engineering Division has reviewed this report and confirmed that there is sufficient capacity in the City's system for the stormwater. A proposed storm drain line for a portion of the site drainage crosses onto the adjacent property at 49 South Main Street, the Smile Building. The applicant will need to obtain a private drainage easement for this infrastructure. The project is located in the Downtown Solid Waste District. The dumpsters serving this building will be located off of Theatre Street.

Ms. Hebert explained that parking has been a concern with the Sanel Block redevelopment and also with the Bindery Building. The applicant is proposing to lease approximately 125 spaces from the City within the Capital Commons parking garage for use by the tenants of the proposed building. The SMILE building leases 150 spaces, and there are approximately 125 spaces available to the public in the Capital Commons parking garage. This project, together with the SMILE building and CATCH residential projects will have impacts on the availability of on-street parking in the area. Currently, on-street parking, especially metered parking on Storrs Street is underutilized in the area. The City may need to reconsider time limits, parking meter locations, and on-street parking space utilization in this area of the Central Business Performance District. As part of the Sanel Block redevelopment, an on-street parking study was commissioned by the applicant and was submitted by VHB on October 14, 2009, for the site plan review of the SMILE office building and CATCH residential development. The parking analysis indicated a parking supply of 329 spaces in the primary study area with an occupancy rate of only 55% and concluded that sufficient on-street parking is available to meet the demands of the Sanel Block developments. Planning staff is recommending that the parking study should be updated to review the impacts of the Bindery project once the CATCH and SMILE office buildings are fully occupied. This will give the City a better understanding of the impacts to parking in the study area and identify any traffic issues that may need to be addressed. The original study included more than just the parking issues, it included an evaluation of cross walks and other non-parking related items, and the staff recommendation to update the parking study does not include updating the non-parking related items that are mentioned in the study.

Ms. Hebert stated that in addition to the parking study, an evaluation of the following intersections should also be prepared by a traffic engineer: Storrs Street & Pleasant Street Extension; Storrs Street & South Main Street; and Storrs Street & North Main Street. The last analysis of the Storrs Street and North Main Street intersection was conducted prior to the construction of Capital Commons in 2009.

Ms. Hebert stated that the loading area is accessed through a 15-foot wide pass-way, for which the applicant needs to obtain rights of use for this pass-way from the State of New Hampshire. This pass-way has been used to access the Bindery building as well as the adjacent properties. Currently, the City is reviewing the plans for construction staging and access that would demonstrate how the pass-way could be used so as not to disrupt the existing use of the pass-way by the adjacent property owners during demolition and construction.

Ms. Hebert explained that staff has recommended that the crosswalk be moved to the north side of the Thompson Street/South Main Street intersection, and that a bump-out be provided on the west side of the street at this location, which is consistent with the Community Consensus Design of the Rethinking Main Street Final Report. Staff is also recommending that a bump-out also be included on the east side of South Main Street in front of the proposed office building. The Traffic Operations Committee

recommends that this bump-out be included as well. The existing building includes a few very large curb cuts to allow for access into this area of the building and the proposal involves closing up the very long curb cut and constructing a widened public sidewalk with opportunity for additional on-street parking spaces. There is also an existing bus stop on the east side of South Main Street, in front of the proposed office building that will remain. Staff has asked the applicant to coordinate with the Parking Committee, the Traffic Operations Committee, and City Council to determine where within the general area the bus stop could be located. The bus stop and on-street parking spaces are something that will need to be approved by the City Council. The applicant will be required to convey to the City a right-of-way easement for the widened public sidewalk.

Ms. Hebert stated that the architect of the building is proposed to be brick. It is a four story building with a walk out basement, so from behind it is five stories. The building is proposed to be red brick on all four sides with a gray stone accent, glazing along the street façade and three main store entrances along the front of the building. The City has also recently adopted new Zoning standards that require a minimum of 60 percent of the length of the first floor of the building needs to be glazed or transparent to the inside. Additionally, there is a requirement that a minimum of 60 percent of the ground level occupancy needs to be comprised of uses that include the sale of goods and provision of services and entertainment to customers who come to the building. The project satisfies both of these requirements.

Ms. Hebert explained that the applicant is proposing two bicycle racks at the main entrance of the building, as well as three large street trees (6-8" minimum caliper) and two light poles. The trees will be the same as were planted at the Smile Building. The screening for the roof top mechanical units will also be similar to the Smile Building.

Ms. Hebert reported that the Architectural Design Review Committee reviewed the landscaping with the project architect at its meeting on September 13, 2011, and the Committee found the design to be appropriate as submitted, with a few suggestions. The Committee asked for a stronger cornice line along the top of the building, more vertical relief in the upper levels to draw your eyes from the ground up to the top of the building. The Committee stated that the building will be a very long building for the downtown area, as most of the downtown structures tend to be more narrow and tall. The Committee also asked that the mechanical screening be shown on the architectural renderings and that the proposed name plate be shown, if one is proposed on the façade of the building. The Committee also asked whether the architect would consider breaking up the distance between the two storefront entrances, as they felt that it was a long span that was not as pedestrian friendly as the proximity of having two storefront entrances close to each other felt like a pedestrian dead zone. One suggestion was to bring the glass down to the sidewalk. The Committee also asked to review the revised plans once submitted.

Ms. Hebert stated that the applicant proposes to construct a display area for a Concord Coach between the proposed building and the office (SMILE) building at 49 South Main Street, but the display structure has not yet been designed. Once the design and location of the coach has been finalized, this would be reviewed by the Planning Board as an Architectural Design Review item.

Mr. Gross asked for an explanation of the justification for the build to line requirement. Ms. Hebert explained that this is a fairly recent change in the City's Zoning that requires developers or landowners to build to the right-a-way in Central Business Performance (CBP) District, as a way to focus construction and building on the street rather than setting structures back, so that parking can be in front of the building. It is to create a livelier streetscape.

Mr. Gross stated that one of the special conditions is the conduct of a traffic study after the fact. He asked what will happen if it is found that this new construction has added new burdens to those intersections which they can't bear. Ms. Hebert responded that an initial traffic study was provided and reviewed by the City's engineers, and the original traffic study also took into account the redevelopment anticipated in the area. This proposed traffic study is not necessarily a full-blown traffic study, but rather an evaluation of those three intersections which will allow City staff to improve the actual traffic with the proposed traffic at those intersections after construction. She stated that the City is not anticipating a significant delay of services. Mr. Henninger stated that a comprehensive traffic study was done for the Capital Commons and the parking garage almost six years ago. The City is now reaching a stage where the Capital Commons building and the proposed Bindery building will take all but 125 spaces to be used by the general public. Now the City is at a point that they want to find out whether that original study was on target and whether the City still needs to do the same level of improvements to the intersections that were planned eight to ten years ago. He stated that within the Central Business Performance District, the City is responsible for on-street parking and traffic improvements. It is more of a check to see if the three new developments will put the City in the position that was anticipated ten years ago.

Ms. Foss asked whether the bus stop is proposed to be a covered stop. Ms. Hebert stated that it would not be covered.

Ms. Foss also asked what the benefits for requiring a voluntary merger would be either to the City or the applicant. Mr. Henninger stated that the current lot lines would bisect someone's office in the proposed building. The merger wouldn't be merging the Smile property with the Bindery property; it is merging the two lots within the Bindery property.

Ms. Foss asked whether it was premature for the Planning Board to make a decision on this project prior to the Demolition Review public hearing planned for September 29<sup>th</sup>. Ms. Hebert stated that the Planning Board has requirement to hear a project based on the date the project was submitted to the Planning Division. The owner of the property ultimately has the right to demolish the building. Ms. Foss stated that she understands those points; however, feels that there are alternatives that could be explored, such as incorporating parts of the old structure into the design. She feels that if the Planning Board approves the design prior to the Demolition Review public hearing that the Planning Board would, in effect, foreclose on the public hearing discussion.

Mr. Hicks asked whether the bump-out would be placed in the travel lane on South Main Street. Ms. Hebert stated that the bump-out would be aligned with the on-street parking.

Mr. Henninger stated that in the loading area on the north side of the building, the applicant would like to convert that to parking spaces, which would require relief from the Zoning Board of Adjustment.

Mr. Steve Duprey and John Chorlian from the Duprey Center, and Steve Long from Opechee Construction were in attendance to answer questions from the Planning Board.

Mr. Duprey stated that the Bindery / John White building is an historic building, and he has looked for ways to save all the building or at least the north wing of the building. He is still doing some analysis, but the initial conclusion is that it is not likely that it will be possible, as it adds another 25 - 30 percent to the building costs. This would be reflected in tenant rents, and quite frankly the tenants who have expressed an interest in renting the space are not willing to pay above market rates for the space. Mr. Duprey explained the history of the Bindery / John White Building. He stated that he plans to have an

etched display board outlining the history of the building, located in the main lobby of the proposed building.

Mr. Duprey also explained the history of the Concord Coaches made by the Abbott Downing and his proposal to have one of the remaining Concord Coaches located in the area between the Smile Building and the proposed Bindery building.

Mr. Duprey stated that there are no problems with the conditions required by the City. He does have plans to go back before the Architectural Design Review Committee for the east elevation, as he is rethinking the massive red brick.

As for the set back of the building, Mr. Duprey stated that the Smile Building is set back as well, and this will provide a wider plaza in front of the two buildings. He did state that the widened plaza is not public property and he would like to be able to enforce that this is private property.

Mr. Duprey stated that he is mindful that the neighbors in the area are apprehensive about the demolition, concrete pouring, and steel erecting, as those are the noisy parts of construction. He said that a seismologist was hired during the construction of the Smile Building to ensure that the stained glass store was not affected. The plan is to have these parts of the construction done during the colder months.

There is a 15 foot passage way which is owned by the State of New Hampshire. Mr. Duprey stated that he will be going before Governor and Council for an easement to utilize the passageway. He will be rebuilding the road bed and repaving the pass-way. Mr. Duprey's plan also includes creating five handicap parking spaces in the bump-out near the pass-way.

Mr. Gross asked Mr. Duprey how his schedule would be affected if the Planning Board's decision were to be deferred until after the Demolition Review public hearing. Mr. Duprey responded that it would cause his scheduling for the project to be a month behind, as well as the noisy part of the construction taking place during the nice weather. Mr. Duprey stated that he intends to have a full set of photographs taken of the building, inside and outside, as well as saving any artifacts that are found. He is also planning on saving the name plate from the John White Building. Mr. Duprey stated that if someone came up with new information or information regarding the building that was broader in scope than what he has now, he would reconsider the demolition.

Ms. Smith Meyer stated her concern with the trees that are being proposed. She stated that the scale of Main Street is changing significantly with the Smile Building and the proposed building. She feels that trees help to mitigate that scale. She stated that the plan is to have 40 feet between two of the trees and 60 feet between the next tree. She was also concerned with the variety and number of the trees. Mr. Duprey explained that because of the set back of the building as well as the bump-out of the building, it doesn't allow for signage for the building. The trees that were chosen have branches that begin eight to ten feet above the sidewalk, which will allow signage on the building to be visible. Additionally, he stated that there are poles that have arms to hold banner-type signs, for which he will need to obtain a license from City Council. Ms. Smith Meyer explained that there could be room for more trees and would leave it up to Ms. Hebert to review and decide on the number and type of tree. Mr. Gross asked if there is a requirement to plant street trees on Main Street. Mr. Duprey stated that there is not a requirement, and that he created the dilemma regarding the street trees.

Alex and John Constant from Constantly Pizza at 37 South Main Street asked to address the Planning Board.

Mr. Alex Constant stated that the City hadn't addressed some of the problems his business faces with this project. The first item is the 15 foot right-of-way and what is going to take place there. The proposal is to use that as the entrance for construction. The applicant is going to bring trucks in and set up a crane. He would like to know how that is going to be done without interrupting the parking. Mr. Constant has spoken with Mike Connors at the State, and before any variances are given to the Duprey project, he will contact Mr. Constant, as Mr. Constant has a written right-of-way for the pass-way. Mr. Constant stated that he doesn't have any concerns about Mr. Duprey putting up the building. He stated that he is a small business owner, who is very supportive in the community.

Mr. Constant is concerned that he will have to wait for six months for the parking and traffic studies to be done. One example of the issues he faces with parking is the Capitol Center for the Arts, of which he is very supportive. He was happy when the parking garage was built, as he felt the parking issues would be solved, especially on the evenings when the Capitol Center for the Arts was running a program. On the key nights, Wednesday through Saturday, no one attending the Center is using the parking garage. This has affected Mr. Constant's business because his customers can't find a parking space, and this cuts into his most profitable time. There isn't a problem at lunch time. During the dinner time, his business has had to discount his prices, but it hasn't helped.

Mr. Constant stated that he doesn't understand why he should need an attorney, but feels that if this project progresses, maybe he should hire one. He understands that there are great benefits to be realized from the project going forward such as the tax benefits, a brand new building, creating a new environment on South Main Street. However, for the people who have been in the area all their lives, he is concerned that he doesn't receive good answers from the City. These are our issues and hopefully the Planning Board members have really dug into and read this project. He stated that he is not disappointed by what is going on, he is disappointed in the fact that in six months or a year from now, is he going to be facing the same thing as with the Capital Center for the Arts with no one utilizing the garage, and the City not upholding their responsibility. He feels that this time he has to speak up. Before he tried to be a good neighbor and work with everyone. He believes that Constantly Pizza will have the biggest interruption of any of the neighbors. As the number of people, who are employed or visitors to the new buildings are using the parking, increases, what will happen then. Mr. Constant stated that he has been to the City several times to speak with staff of the Planning Division, and wonders if there is something that the City doesn't want to tell him. These are his concerns as a small businessman. He has plans to develop his business by extending in the back of the building, but he wonders if he should be investing in developing his business and end up once again without parking. He suggested that the Planning Board look at the Capital Center for the Arts calendar and add the parking requirement that will be needed for the new buildings to see how parking will be affected. Mr. Constant stated that the City has a responsibility to have examined this completely, as he is very concerned, and he says this with all honesty, that if he comes back, he will come back with an attorney, and he will go to the federal level if necessary.

Mr. Gross stated that he wanted to be sure he understood Mr. Constant's presentation and his concerns. He heard Mr. Constant talk about the use of the 15 foot right-of-way. Mr. Gross asked whether the State has provided Mr. Constant with a right to use the right-of-way. Mr. Constant stated that he has deeded access to it from the State at the time of the sale of the property to the State from a former owner. The second question Mr. Gross had for Mr. Constant relates to parking. He asked Mr.

Constant whether his concerns were about the shortage of on-street parking. Mr. Constant responded yes, at key times during the evenings.

The Chair wanted to clarify the parking study issue. He said that there was already a parking study done that takes into account the Smile Building and the proposed Bindery Building, as well as other development on South Main Street. The reference to the study to be held in six months is to obtain an update on the accuracy of the parking forecast that came out of the original study, so that the City can determine how to move forward, appropriating funds for the City's Capital Improvement Plan. Mr. Constant stated that he understands the studies, but he is trying to point out to the Planning Board what actually occurs from 3:00 PM on. The Chair asked what Mr. Constant suggests the City do, short of putting signs up in front of his business stating "parking for Constantly Pizza." Mr. Constant asked the Chair how many people would be in and out of the new building and stated that the parking garage only has approximately 125 spaces available for the general public. Mr. Constant stated that he doesn't understand how the completed study is actually reflecting what is taking place currently, if the City doesn't know how many people will be coming to the new building in the evening. The Chair explained that the parking study to be completed in six months will help the City better understand how the growth is affecting parking. Mr. Constant stated that people do not return to his business because of the lack of parking. The Chair stated that he did not have any answer to this problem right now, nor does he believe that the City has any answers either.

Mr. Henninger stated that it would be difficult for the City to determine an answer until they obtain a better range of uses from the new building, but what they expect from an office building of this size is the need for about 230 parking spaces. There is enough on-street parking in the overall area to accommodate that amount, plus what is being leased in the Capital Commons garage. Mr. Henninger stated that nothing is going to preclude people who are not visiting Mr. Constant's business from parking in the spaces in front of his business. Mr. Henninger also stated that the Capital Center for the Arts was approved without parking by the Zoning Board of Adjustment. Prior to that approval there wasn't much economic activity on South Main Street. Ms. Hebert explained that the six month delay for the new parking study is to ensure that there is a realistic snapshot of how parking is functioning once this building, the Smile Building, and the CATCH building are occupied. She explained that if the City were to conduct this study now, the results would still be projections, and the City needs to have accurate information in order to manage these spaces correctly so that people can park, eat, and move on. Mr. Henninger asked Mr. Constant what the parking time was in front of his business. Mr. Constant stated that there are two hour spaces as well as all-day parking. Ms. Hebert stated that the Capital Center for the Arts has an agreement with the Duprey Center to use the newly constructed parking off of Storrs, and she hoped that Mr. Constant would be seeing improvement on the nights that the Capital Center for the Arts had events. Mr. Constant stated that he didn't think it would make a difference in the availability of the parking on Storrs Street, as it doesn't appear that people want to walk from the parking garage any more than they will want to walk up the hills from Storrs Street, especially in the winter time when the sidewalks are slippery. He stated that this was a safety issue. Ms. Hebert stated that the Theatre Street sidewalk is heated as well as the public sidewalk in front of the Smile Building.

The Chair added that the right-of-way area being used during construction will be something that Mr. Constant will have to stay on top of it. He stated that he understands Mr. Constant's concerns. Mr. Constant stated that he would be staying on top of that as well as the other issues he has raised. The Chair thanked Mr. Constant for his comments.

Mr. Jim McConaha, a resident of the South End of Concord and member of the Heritage Commission asked to address the Planning Board.

Mr. McConaha stated that listening to the discussions thus far have focused on the technical aspects of the project and not the historic aspects, with the exception of the developer speaking of the historical value of these building. Mr. McConaha explained that when word got around that the Bindery Building and the John White Building might be demolished that there was a fair amount of alarm in the City. He stated that people had expressed their worry about the demolition of one of the few remaining 19<sup>th</sup> century manufacturing buildings in the City of Concord, and particularly on South Main Street. Some of these building, which are now gone, included the Ford and Kimball Brass and Iron Foundry and the Prescott Piano Company. Across the street there are still buildings that remain of the Abbott Downing complex, further down the street the Gas Holder building still stands, and next to that is a very well preserved set of buildings that belonged to the Holt Manufacturing Company. All of these structures and businesses were owned by men who were famous not only in Concord, but around the country and world as well.

Mr. McConaha referred to the goals related to historic resources in the City's Master Plan: safeguarding the heritage of Concord; encouraging the rehabilitation of historic buildings; encouraging development that reflects the historic landscape, and encouraging the adaptive reuse. He stated that this area is just south of the district of Main Street that is listed on the National Register of Historic Places. The particular area from Hills Avenue and further down South Main Street has not yet been surveyed. He believes that some of the really important historical information that relates to these structures and these businesses in this part of Concord's history has not been developed as fully as it might. He also stated that as a matter of process, but he doesn't know how the Planning Board puts the goals of the Master Plan into practical operation, but feels that when a project is before the Planning Board that is impacting an historic structure, it seems that part of the information in front of the Planning Board is the historical significance of that structure. He thinks that this can be achieved by undertaking an historical survey, as is done under Section 106 of the Federal law, which is accomplished by certified professionals to a rigorous standard established by the National Parks Service.

The other issue that often comes up, Mr. McConaha explained, is that a developer states that the building can't be used for anything because its condition is beyond future use, the condition is bad, the layout doesn't work, etc. Having the Planning Board obtain an evaluation of the historic integrity that remains in the building can be used in deciding what should be saved, such as the Planning Board requested when the application for the Cumming's building on Green Street was before them.

Mr. McConaha stated that the Demolition Review Committee is holding a demolition review public hearing next week for 43 and 45 South Main Street. The purpose of the demolition review process is to find alternatives to demolition. He suggested that the information obtained from the public hearing should be available to the Planning Board prior to their decision on the site plan application.

Mr. McConaha explained that he felt there is a real big problem with the current ordinances. Currently any developer, who comes before the Planning Board wanting to demolish any of these remaining historic manufacturing structures, as long as the developer meets all the technical requirements, the project would get approval without any historic reference. Soon the City will lose its historic appeal. Mr. McConaha stated that he was not speaking to argue this project one way or another, and he thinks that Mr. Duprey has done a good job in his contributions to the community over the years and has given due consideration to the reuse of the building. This has been a bad year for historic properties;

the City has lost more historic properties this year than in the past 50 years. He wonders why anyone would visit downtown Concord if it doesn't have its historic flavor.

Ms. Smith Meyer agrees with Mr. McConaha's assessment that the Planning Board should not make their decision prior to the Demolition Review public hearing. She feels that the Planning Board could be on a very slippery slope, and one of the things that could happen is that part of South Main Street becomes very homogenous and it loses its historic context. She said that it is hard to balance the economic development with historic preservation. Mr. McConaha stated that the City needs better tools to preserve its historic properties. He also feels that it is something that the community has to decide – how important are these buildings, because each building individually makes up this historic city. The Chair thanked Mr. McConaha for his comments.

Mr. Duprey, in response to Mr. McConaha's comments, shared with the Planning Board, that he is not unmindful of the historic nature of the building. He saved the Concord Firehouse when it was abandoned, which was one of the most historical significant buildings in the City. He did the redevelopment of the Cheers' Building on Storrs Street. Dr. Strong's Office at 29 Green Street was another building he saved when the Legislature was going to demolish it for a parking garage. He stated that he agrees with Mr. McConaha about the number of losses incurred. But he feels that until we get to the point where we find a mechanism to compensate an owner for taking the loss of value that sometimes accrues with redeveloping an historic building, he doesn't know what the solution is. He believes that the City is reacting instead of being proactive with these historic buildings.

Mr. Duprey responded to Mr. Constant's comments regarding the parking situation. He stated that he has an agreement with the Capital Center for the Arts to have their customers park in the 125 spaces that during the day will be used by the tenants in the new building; he is creating three or four new spaces in front of the proposed building, and is making five handicap spaces available.

Mr. Gross asked Mr. Duprey about the interference that Mr. Constant feels will exist with regard to the access of the 15 foot pass-way. Mr. Duprey explained that the State owns the fee title and Mr. Constant has a right of access, not an exclusive right of access. The State is prepared to provide Mr. Duprey with the same right of access as Mr. Constant has. During the construction process, the right of access will be broader. Mr. Gross stated that Mr. Constant's concern is that Mr. Duprey's use of that right-of-way will impinge on his use of the right-of-way. Mr. Duprey stated that during construction, the only use will be to go down the pass-way with the construction trucks to get to their site. The State uses that pass-way daily for deliveries, and therefore, no one has a right to park there or set up a crane in the right-of-way.

The Chair thanked Mr. Duprey for his comments and closed the public hearing.

#### Deliberations and Action on the Application

Mr. Gross stated that he wanted to follow up Ms. Foss' initial questions regarding the Planning staff's concept of the process and sequence of procedures in the City's ordinances for the provisions for surfacing questions regarding demolition of historic buildings. Mr. Henninger stated that the Code Administrator has put a timeline associated with the demolition delay ordinance; the timeline for the entire process ends October 1<sup>st</sup>. Mr. Henninger reported that the public hearing should have been held long before the window for demolition delay is closed; instead the public hearing is scheduled for two days prior to the demolition window. Ms. Hebert stated that when the staff report to the Planning Board was sent out, the Demolition Review Committee had not yet decided on a date for the public

hearing, and there is nothing in the standard operating procedures or the site plan regulations that states that the Planning Board process can be delayed because of the demolition review. The demolition review is tied to the issuance of building permits and demolition permits. If the Demolition Review Committee acts independently and recommends changes to the design of the building and the owner is willing to entertain those recommendations, the developer is welcome to come back to the Planning Board for further consideration. She stated that Mr. McConaha does bring out some of the shortcomings with the regulations with regards to the preservation of historic buildings. Mr. Gross said that the question is whether the City is serious about preservation, and although the City provides a mechanism for a hearing, there is definitely some kink in the system which essentially says we just have to hurry up and get it done. The Chair mentioned that there is a proposal from the Heritage Commission to take another look at those regulations that affect the process for demolition review.

Ms. Smith Myer stated that she doesn't recall any other time that this has happened, and she doesn't feel it is right for someone who wants to talk about a project at the demolition review public hearing while the Planning Board has already made its decision. She also wondered how the record of the historical significance of a building is brought to light. Ms. Hebert stated that the demolition review is not tied to the site review process, so it is possible that the developer is doing the site plan review process so that they can compute their numbers and obtain financing, maybe they don't intend to demolish the building until maybe six months or a year from now, so the developer is not obligated to apply for the demolition permit before or after site plan review. In this instance where it has been brought to the Planning Board's attention, perhaps the Board could discuss and recommend to either recess or table the hearing to allow the demolition review public hearing, because of its close proximity to the demolition review public hearing.

Mr. Henninger stated that the Planning Board has statutory time frames as a completely separate legal process. He stated that the Planning Board has adjusted their approval on two occasions to allow further consideration of the demolition. At other times, the Planning Board has acted without the input from the Demolition Review public hearing. He reported that the Demolition Review regulation only allows for a delay of the demolition.

Ms. McClure restated that the public is given an opportunity to comment at the Demolition Review public hearing, and she has concerns with the decision of the Planning Board preceding the public hearing. The Chair stated that the Demolition Review Committee scheduled the meeting for the last possible moment before demolition could begin.

Ms. Foss moved to table the application until the next Planning Board meeting following the Demolition Review public hearing. Ms. Smith Meyer seconded the motion. The Board, later in the meeting, set the continued meeting for October 5, 2011.

Mr. Gross supports the motion, as he believes it is important for the public to participate in the process of demolition, which is a meaningful process, and that the delay does not cause a substantial impact on the developer.

Motion carried.

### **Architectural Design Review**

- 3. Applications by the following for approval of signs at the following locations under the provisions of Section 28-9-4 (f), Architectural Design Review, of the Code of Ordinances.**

- **Bektash Temple for one freestanding sign at 189 Pembroke Road.**
- **Concord Christian Academy for revisions to an existing freestanding sign at 37 Regional Drive.**
- **iParty Halloween store for one freestanding sign and one affixed sign at 196 Loudon Road.**
- **Manchester Street Pizza & Deli for a replacement panel in an existing freestanding sign at 15 Manchester Street.**
- **Subway for one affixed sign at Wal-Mart at 344 Loudon Road.**
- **TD Wealth for one replacement affixed sign at 143 North Main Street.**

Public Hearing

The Chair opened the public hearings on the above sign applications.

- **Bektash Temple for one freestanding sign at 189 Pembroke Road.**

Mr. Henninger reported that additional information requested of the applicant was not received by the Planning staff.

Mr. Gross moved to table the application, and Ms. Smith Meyer seconded the motion. Motion carried.

- **Concord Christian Academy for revisions to an existing freestanding sign at 37 Regional Drive.**

Mr. Henninger reported that additional information requested of the applicant was not received by the Planning Staff.

Mr. Gross moved to table the application, and Ms. Smith Meyer seconded the motion. Motion carried.

- **iParty Halloween store for one freestanding sign and one affixed sign at 196 Loudon Road.**

Mr. Henninger reported that this application for one freestanding and one affixed sign is for temporary signs that will be in use longer than current zoning allows, therefore, the applicant needs to request approval from the Planning Board. The application received approval last year.

Mr. Henninger reported that the Architectural Design Review Committee recommended approval with the condition that the flood lights on the ground be fully shielded, as last year this caused a glare problem.

Mr. Gross moved to approve the application with the condition that the ground flood lights be fully shielded. Ms. Smith Meyer seconded. Motion carried.

- **Manchester Street Pizza & Deli for a replacement panel in an existing freestanding sign at 15 Manchester Street.**

Mr. Henninger reported that this application for a replacement panel in an existing freestanding sign. The revision was recommended for approval by the Architectural Design Review Committee, with the suggestion that the applicant clean up the rust on the pole sign to make it more attractive.

Mr. Gross moved to approve the application with the recommendation that the application clean up the rust on the pole. Ms. Smith Meyer seconded. Motion carried.

- **Subway for one affixed sign at Wal-Mart at 344 Loudon Road.**

Mr. Henninger reported that this application was for an affixed sign on the exterior wall of the Wal-Mart building, facing Loudon Road. The restaurant is located internally. The recommendation of the Architectural Design Review Committee is to approve as submitted.

Mr. Gross moved to approve the application as submitted. Ms. Foss seconded. Motion carried.

- **TD Wealth for one replacement affixed sign at 143 North Main Street.**

Mr. Henninger stated that the application was for one replacement affixed sign on the north end of the building. The recommendation of the Architectural Design Review Committee is to approve as submitted.

Ms. Foss moved to approve the application as submitted. Mr. Gross seconded. Motion carried.

4. **Consideration of an application by Havenwood Heritage Heights for approval of a covered entry ramp at 33 Christian Avenue. (2011-0039)**

#### Public Hearing

Mr. Henninger reported that the application is for an addition of a covered ramp walkway at the north corner of the main building, over an existing entrance. The recommendation of the Architectural Design Review Committee is to approve as submitted.

#### Deliberations and Action on the Application

Ms. McClure moved to approve the application as submitted. Mr. Hicks seconded. Motion carried.

5. **Consideration of modifications to the site and building plans for a previously approved site plan for Forget & Boucher, LLC, on behalf of Concord Nissan for approval of a second building for an auto body shop at 175 Manchester Street. (2011-0044)**

#### Public Hearing

Mr. Henninger explained that at the August Planning Board meeting, the Planning Board granted a conditional approval of modifications to the site plan to retain a portion of the existing second building to be used as a body shop. The applicant is proposing to build an addition to one side of the building, which will include storage, mechanical equipment, offices, and a break room. The remainder of the building will be a three-bay garage. The materials, colors, roof, and signage will match the Nissan building. The applicant was refining the exterior design and asked to defer the Architectural Design review portion of the application until this month. The recommendation of the Architectural Design Review Committee is to approve as submitted.

Deliberations and Action on the Application

Mr. Gross moved to approve the application as submitted. Ms. Smith Meyer seconded. Motion carried.

Master Plan Amendment

6. **Consideration of an amendment to the Master Plan 2030, Concord, New Hampshire to amend the Future Land Use Map to designate land between Wattanummon's Brook and Commercial Street from a Natural Resource Protection classification to an Institutional classification.**
7. **Consideration of a request by Delta Dental on behalf of the Angwin Revocable Trust for a partial rezoning of property at 107 Commercial Street from an Open Space Residential (RO) District to an Institutional (IS) District.**

**(Both Items 6 & 7 were taken up together in a joint hearing).**

Public Hearing

Mr. Henninger reported that the application is requesting the rezoning of a portion of land owned by the Paul & Rachael Angwin Revocable Trust, at 107 Commercial Street located between Commercial Street and Wattanummon's Brook, from Open Space Residential District to Institutional District. The property is across Commercial Street and the Concord to Lincoln Railroad line from the main office of Northeast Delta Dental. Delta Dental Plan of New Hampshire, Inc. has a purchase and sales agreement for the property.

Mr. Henninger stated that this request involves a modification to the Future Land Use Map and if this is approved, it would support the rezoning requested by the applicants to allow the reuse of a portion of the Angwin property.

Mr. Henninger explained that the eastern portion of the property is occupied by an existing single family residence, detached garage, paved driveway, and lawn area. The site is bisected by Wattanummon's Brook and wetlands, subject to the City's Shoreland Protection District. The west side of the site has been used for agricultural purposes and is currently a grass field except for the wooded wetlands adjacent to Wattanummon's Brook and Horseshoe Pond. The land use to the north and west abutting the area requested for rezoning is either wetlands or agricultural use.

Mr. Henninger reported that the NH Department of Transportation has plans to reconstruct Delta Drive this coming summer, complete with a new bridge. This reconstruction will not interfere with the Angwin property.

Mr. Henninger stated that on the western portion of the site, not proposed for rezoning, standing water was present in April 2000 and 2010, as shown on the City's aerial photos. The eastern portion of the site where the house is located is sits on a plateau around the 240 feet elevation, approximately 8-10 feet above the surrounding area, and at or near the City's required minimum finished floor elevation of 239.10 feet.

Mr. Henninger stated that after last month's meeting, a new zoning line was proposed that more closely follows the existing us line associated with the land use around the house. The zone line follows the shoreland protection setback for the brook. The existing house is the last single family residence remaining on Commercial Street.

Mr. Henninger reported that recommendations were received from the Conservation Commission, the Heritage Commission, and the Economic Development Advisory Committee. The Conservation Commission was negative in regard to their recommendation. The Heritage Commission found that the buildings themselves had no historic significance, but recommended that prior to development a full archeological study be done, as there might be the possibility of Native American artifacts found onsite. The Economic Development Advisory Committee voted in support of the modification to the City's Master Plan.

Mr. Gross stated that the Conservation Commission voted to recommend against the proposed rezoning, and further opined "that there was no compelling reason to rezone the land." The Board noted that the 'land includes an important buffer to Watanummon's Brook and any increase in impervious surface beyond the existing residential use would be a detriment to the natural resources in the vicinity of the property, including the brook which is a tributary to the Merrimack River, Horseshoe Pond, the Aquifer Protection District, and the Shoreland Overlay Protection District." He asked whether the increase in impervious surface on the site would increase runoff into the brook. As he understands it, run-off is one of the major concerns that environmentalist have in preserving water bodies. Mr. Henninger stated that the primary concern with any site development would be both the quality and quantity of the runoff in this area. There would be some impervious surface on the site, but the percentage of the total site would be very small, and the bulk of the site would be under an open space restriction, which would add to the amount of land already under protection. Mr. Gross asked how the runoff would be dealt with. Mr. Henninger stated that because of the elevation of the site, it would provide the ability to have infiltration on the site to reduce the runoff. There would also be the ability to do various stormwater treatment methodologies to modify the water quality of the site runoff. Currently the Horseshoe Pond site receives a lot of runoff from the interstate and there is an existing drainage study and program underway to address that issue by the NH Department of Transportation. Mr. Gross stated that he understands that in the process of approving any development proposal, that the Planning Staff would pay particular attention to the runoff issues. Mr. Henninger responded that both the Planning and Engineering staff would pay extensive consideration to the issue of runoff.

Ms. McClure stated that she was puzzled by Mr. Henninger's recommendation. She stated that as part of Mr. Henninger's justification to changing this area from Residential Open Space to Institutional, that there is an existing residential property on the site. She asked whether having residential properties in a Residential Open Space was a common practice. Mr. Henninger stated that he was puzzled by the Conservation Commission's recommendation, as this is a classic example of trying to balance development and conservation measures. There is an already developed piece of property in an area where there is no longer a reasonable expectation of residential use. He thinks that this is an opportunity to protect the bulk of the property and allow for reasonable reuse of an area that has already been disturbed. Ms. McClure said that the other item she has an issue with is that Mr. Henninger stated that the property would have more protection by rezoning, when it seems to be fairly well protected being the current zone. It appears obvious that the zoning line was the street with all the development on the other side of the street. Mr. Henninger replied that the buffer has been largely eliminated through agricultural and residential activities. He thinks that leaving it in its current zoning, there would be no opportunity through the site plan process to begin the re-vegetation process of that

area. As a single family property, the landowner could begin altering the entire area without any review at all.

Mr. Gross asked if Mr. Henninger was stating that there is an increase in protections with the rezoning. Mr. Gross stated that normally with increased intensity of land use, there are fewer protections, and what Mr. Henninger is stating is counter-intuitive. Mr. Henninger stated that the rezoning presents an opportunity to further protect the property. Mr. Gross asked whether there is an easement proposed on portions of the property, and who would provide the easement. Mr. Henninger stated that Northeast Delta Dental has proposed to provide an easement once they obtain title to the property. He stated that the rezoning could become effective only after the easement has been recorded. Ms. Hebert asked whether the easement would become effective shortly after the time of the rezoning or at the time of development. Mr. Henninger said he would recommend that the City Council hold off on rezoning the property until the easement is recorded.

Ms. Smith Meyer stated that this appeared to her to be spot zoning, and that the Angwin property would be the only parcel of land on that side of the road to be commercially developed. She agrees with Ms. McClure that the predictable division is the road and the railroad.

Mr. Henninger also stated that there is a boundary issue regarding the Angwin property and the Morrill property. He also stated that the site has water and sewer service, as well as access to a collector road, which are more appropriate for commercial development than residential use. A 100 foot wide Concord Electric power easement also exists on the site.

Mr. Lavers asked how much of the rezoned area would not be subject to a conservation easement. Ms. Hebert stated that the open space easement would remain in the Residential Open Space district. Ms. McClure stated that it would be an open space easement not a conservation easement and includes the right to build a ball field.

Attorney Richard Uchida from Orr & Reno and Tom Rafio and Joe Casper from Delta Dental were present for the applicant.

Attorney Uchida stated that he forwarded a letter to the City Council requesting the rezoning on behalf of Delta Dental, and provided the Planning Board with some background of the property. He stated that the property is a little over six acres, and the Angwin family has owned the property since 1951. The family no longer lives there and the house has been empty for some time.

Attorney Uchida reported that the applicant is seeking to rezone only the upland portion of the property outside of the Shoreland Protection District. Of the total six-acre parcel that the Angwin's own which Delta Dental would acquire, about one and one half acre would be the developable portion of the land. The other 75 percent of the land would be protected by the open space easement. This zone would be the exact zone as the current Industrial Zone that the Delta Dental campus across the street is under. The zoning scheme that the Planning Staff has discussed is the same zoning scheme that the Planning Board previously approved for the current Delta Dental site back in the early 1990s, when that parcel was rezoned from a Residential Open Space District, which at that time was not called Residential Open Space, but the concept was the same. Attorney Uchida stated that at the time the rezoning was proposed, that there were significant environmental sensitivities in the area. It was that sensitivity that caused the applicant to propose the open space easement, which is identical to a conservation easement for these areas with the exception of the reservation of a right to create a ball field on the portion of the parcel outside of any wetlands or wetland buffers. Attorney Uchida said that this was similar to what

was done on the other Delta Dental property. He also wanted to note that anything the applicant looked at, they looked at reestablishing the buffers that would normally be expected to see against the Shoreland Protection District. Currently, there are areas that are cleared in the 75 foot buffer from Wattanummon's Brook, and in the 50 foot buffer from the little tributary that goes into Wattanummon's Brook. What the applicant has proposed is to stay out of those areas and re-vegetate those areas, which would help significantly in any treatment of runoff as well as keeping runoff away from those areas.

Mr. Rafio thanked the Planning Board for the opportunity to be heard. He stressed that Northeast Delta Dental has a track record of being sensitive to environmental concerns and he thinks that they have proven that. He believes he can balance the protection of the bulk of the property with all the concerns that have been heard this evening. As the Planning Board knows, Delta Dental was the first building on the Opportunity Corridor, and they are well aware of the historical and environmental concerns in the area. He stated that they were well aware of these concerns when Delta Dental built the soccer fields that Concord Park and Recreation and Concord Express have used and continue to use. If the project does go through and Delta Dental does create the ball fields, they would be used for the kids of Concord. Mr. Rafio stated that Delta Dental has proven that they do things first class and they are happy to go along with the setback request of the Conservation Commission and any other environmental considerations because the reality is that if we are to become the owner of the Angwin property, the area would probably remain as is until 2014. Mr. Rafio said that what he is dealing with is the health care reform, which is here to stay despite what is printed in the press. He feels that because of health care reform, his business will be changing from a business to business model to a business to consumer model, because more and more employers will be dropping their employee group dental benefits. He is thinking that in the future, he will need a think tank of additional employees to think about the future of dental insurance. Currently, Delta Dental has about 250 employees located at 1 and 2 Delta Drive. He doesn't know exactly what he will need that space for, but he can assure the Planning Board that the ball fields will simply be an extension of what they do know, which is allowing the Concord soccer teams to use their fields. Mr. Rafio stated that they are also diversifying, so he is not sure if the new property will be a wellness center. He can say that he believes that we can bridge the balance of being environmentally sensitive in all the things that have been referenced and in doing things first class.

Mr. Rafio wants to be able to keep this new space in the area of the current Delta Dental campus. He believes that what is currently the Opportunity Corridor, which used to be referred to as the "crud corridor" is based in part on the vision that Delta Dental had when they first moved into the area. He wants to protect the area, but wants the ability to house a few employees in the proposed area. In the final analysis, he thinks that he can be both consistent with zoning requirements and sensitive to environmental concerns, as well as doing a first class operation like they have always done for the City.

Attorney Uchida stated that the City is always good about rezoning parcels when the current zoning doesn't seem to make sense anymore and he believes that this is an example where the continued zoning of this parcel as a residential parcel doesn't make a great deal of sense, at least with respect to the upland area. The Planning Board faced a similar situation in the early 1990s right across the street, when decided on the rezoning of the current Delta Dental parcel, because it was west of the interstate and there was nothing else in the area. It was north of what was called Fan Road, now Delta Drive, and Wattanummon's Brook backed up to it. The City then, as we hope it will now, recognized that there was some development potential on that property that made sense. What it did was protect Wattanummon's Brook by backing the ability to develop the property away from Wattanummon's

Brook. He stated that under the current proposal that the Planning Board now has, not the original one that went to City Council, but the new proposal, they plan to do the same thing, which is to stay away from the brook with the new rezoning line. He thinks that it is a similar type of rezoning scheme that the Planning Board has encountered previously, and he thinks that the ultimate question for the Board is does the change to the land use plan, does the rezoning represent a sensible request given what has happened in that area, as well as protecting those sensitive environmental areas. Attorney Uchida believes that the proposal does all that.

Ms. Sherry Morrill of North State Street asked to address the Planning Board. She is one of the main abutters to the property.

Ms. Morrill stated that there is a major boundary line dispute between the Morrill property and the Angwin property. About a month ago, the Morrills heard about the potential project, and within a few days she was contacted by Dan Mullen, a surveyor from Richard A. Bartlett & Associates. While Mr. Mullen was doing some survey work on the property, he asked the Morrills whether they had any maps of the property, which she provided to him. There still is quite a discrepancy of about 100 – 150 feet of land on Commercial Street that the Morrills believe is theirs. The property was sold to them by Tim Woodman. She hasn't had contact with anyone representing the Angwin property, and feels that this boundary issue is a big one for the Morrills.

She stated that the other issue is that all of the land that surrounds the Angwin property is their farmland and it is all under a conservation easement with the Forest Society, and the Morrills feel very strongly about protecting that land. She is hearing about the buffer zones and the open space that Delta Dental would like to keep, but there is a perfect buffer zone that exists now, which is Commercial Street that divides commercial development with the open land. What the applicant is talking about saving and using as a ball field, is underwater a good portion of the year. It is wetland regardless of what is done. In the past, the Morrills have had an agreement with the Angwins where the Morrills cut the hay from the property, and if they've been lucky they might get one cutting each year. The property is land that holds the world together. If someone tries to build in there and put in some kind of parking, there is going to paving and the water level will be raised. This will just continue to add on and on. The Morrills feel that it is important for that land to remain open space. She feels that perhaps this is an opportunity for the City to step forward and purchase the property and make the entire piece a conservation easement; it truly is a beautiful piece of land, which is not worth a lot, as not much of it is actually buildable. Some people see it as being dollars and some see it as having more value as open space. Many people walk in that area and enjoy the property. The Morrills would like to see the property not rezoned and to continue to use Commercial Street as the buffer. The field that currently open space has not been mowed in more than two years and has grown up and serves as a buffer zone.

Ms. Morrill stated that the applicant has talked about minimum water runoff. She stated that the water that runs off from development on Commercial Street has really affected the Morrills and their farming operation because it raises the level of the pond and holds the water level up on that land all year long. If parking is allowed on this other piece, there is going to be runoff and the water level will be raised.

The Chair thanked Ms. Morrill for her comments and stated that a vote will be made one way or another this evening, and unfortunately the Planning Board doesn't have any say in the boundary line dispute.

Mr. Leonard Brochu of Brochu Nurseries and an abutter to the Angwin property asked to address the Planning Board.

Mr. Brochu said that some of what he wanted to discuss was in agreement with what Ms. Morrill said regarding the water runoff issue. He stated that Wattanummon's Brook is the only exit for runoff from Horseshoe Pond, 393, and the City, which pumps water into the area. Since the 1960s when his family purchased the property, the river has never flooded, but Mr. Brochu's property has flooded because of the brook. He stated that there is only one four foot culvert that runs under the highway, which takes the water from the area. Mr. Brochu doesn't see how more rezoning restrictions will protect the area more. If the area is left for farming and the beaver dams continue to be controlled, there will be less of an issue.

He stated that his agricultural business's headquarters are located at this site, with another 100 acres on West Portsmouth Street. Parking at the Commercial Street site is available for 20 vehicles, so there is not a lot of asphalt on site. He can't imagine that if an acre and a half is being developed and building a four or five story building, that there would not be 50 or 60 parking spaces for vehicles. That is much more than what he has.

Another concern of Mr. Brochu's is that Delta Dental is proposing to create ball fields in the area. A ball field will require commercial fertilizer, not the organic stuff that the Morrills use. This commercial fertilizer will be a part of the runoff into the brook, which is much worse than cow manure. If there is a ball field built for the children, the parents will need to drive those children to the site and will require additional parking on the other side of the property. This additional parking lot will also create runoff. Any development on the site will restrict the water being able to come out. Commercial Street is a great divider, which was decided by previous Planning Boards, and also what is entailed in the City's Master Plan. Mr. Brochu feels that because someone has given back to the City shouldn't entitle them to extra rights.

Mr. Brochu stated that he had landscaped the current Delta Dental Campus when it was originally built and he remembers saying that there could be an addition built on the back of one of the buildings.

Mr. Brochu hopes that the City realizes that this project would cause hardship to both the Morrills and the Brochus and hopes the City considers this hardship. The Chair thanked Mr. Brochu for his comments.

Attorney Uchida stated that he wanted to address a couple of the points that were heard this evening. It is correct that there is some uncertainty about where the boundary line is on the property, but he said that the uncertainty is limited to the small area on the southern tip of the property which is set back by the wetland buffer and the front yard buffers off Commercial Street. For practical purposes, and he's not downplaying Ms. Morrills' issue, but from a development perspective that will not make any difference one way or another, as the area couldn't be developed.

Attorney Uchida also stated that the applicant is aware of the condition of the property and if the ball fields don't work, it is not an essential part of the proposal, and if the environmental conditions are such that the ball fields don't make sense, then the ball fields will not be part of the development. With regard to the drainage in the area, Attorney Uchida suggested that the issue could be the under sizing of the culvert there as a result of some of the development that has occurred in the area. The applicant is prohibited from increasing the amount of volume or rate of runoff coming off of that area in any event. Even if the applicant was permitted to develop the property, they wouldn't be adding to the problems with the water in the area.

Mr. Rafio said he wanted to emphasize a couple of points. The boundary line issue can be resolved and 100 feet is not a big issue with Delta Dental. As for the size of the building, he is not planning on a four or five story building, and that the property is probably going to sit as is until at least 2014. It would be a much smaller building and would not have 150 parking spaces. Mr. Rafio also stated that he does not plan on putting an addition at either 1 or 2 Delta Drive. He also stated that it was Red Brochu who gave Mr. Rafio the idea of soccer fields in the area on the current Delta Dental campus.

Mr. Rafio stated that if the ball field became an issue, they would certainly take that off the table. He also said just to clarify that Delta Dental would still pay taxes on the ball field area of the property.

Mr. Rafio explained that Delta Dental is and will continue to be supersensitive to the environmental concerns. He also feels that if the proposal is approved; Delta Dental would take care of the property in a first class manner as they have done in the past.

Deliberations and Actions on the Master Plan Amendment and  
Consideration of the Rezoning Request

Ms. Foss moved to retain the current Future Land Use Map designating the land between Wattanummon's Brook and Commercial Street as Natural Resource Protection. Ms. Smith Meyer seconded.

Mr. Gross stated that he cannot support the motion, as he feels that there is an opportunity to provide greater environmental protection with this development. The flooding situation is a difficult one, but he doesn't see how that will be changed as new development is prohibited from adding more to the runoff. Mr. Gross also sees no sanctity in using Commercial Street as a zoning boundary, if the effect is to reduce the City's ability to add environmental protection to the west of it. He will vote against the motion, and if the motion fails, then he will move to change the Master Plan to reflect the change in classification.

The Chair as a point of clarification, the City's Ordinances dictate that there is no greater runoff from any development. The amount of runoff must be the same or less. He is sympathetic to the issue, but appreciates that the regulations have changed to control runoff issues much better.

Mr. Hicks said that he doesn't agree with the necessity to change the zoning as he thinks that this piece of land in the Residential Open Space District is a better fit as it currently is.

Ms. McClure said that she truly appreciates Delta Dental's community spirit and understands that they are sensitive to the environment, and they are looking to expand in the future and make a business decision here. However, she feels that this would be a bad precedent to set to make decisions on zoning changes based on the use in the adjacent zone when a decision was made prior to this in constructing the Master Plan about the importance of protecting this water body and the wetlands surrounding it. If we start letting the development slide into the open space areas, then she feels that we are defeating the purpose of having the Master Plan and zoning. Any change to the Master Plan or the zoning on that parcel of land is going to create the potential for a more intense use than what exists right now. She stated that she disagrees with Mr. Gross' statement regarding the opportunity to offer greater protections with increased development.

Mr. Hicks agrees with Ms. McClure and believes that Delta Dental is a great business in the City of Concord and does a lot for the City, as do both the Morrill and the Brochu families. He doesn't want to set a precedent to start changing zoning because a business wants to expand.

The motion passed by a vote of 5 to 3.

Ms. McClure moved that the Planning Board's recommendation to the City Council is to deny a request for a partial rezoning of property at 107 Commercial Street from Residential Open Space to Industrial, because the Planning Board voted against amending the City's Master Plan. Ms. Smith Meyer seconded.

Mr. Gross stated that he supports this motion, not because he has changed his mind on the merits, but because the Planning Board has voted not to change the Master Plan, he thinks it would be legally inappropriate for the City Council to be under the impression that they should go ahead and change the zoning.

Motion carried.

### **Subdivision Regulation Amendments**

8. **Revisions to the Subdivision Regulations to address omissions, oversights, and other minor modifications.**

The Board postponed this hearing to the continued meeting on October 5, 2011.

### **REGULAR MEETING**

9. **Consideration of minutes of Planning Board meetings for the following dates:**

- **August 24, 2011**

Mr. Gross moved to approve the minutes of the meeting of August 24, 2011, as submitted. Mr. Drypolcher seconded. Motion carried.

### **New Business**

10. **Request by Capital Offset Company, Inc., at 181 North Main Street, to rezone the southerly portion of Tax Map 55, Block 3, Lot 15, and consideration of rezoning a parcel owned by First Congregational Church at 177 North Main Street, Tax Map 55, Block 3, Lot 14, from the Downtown Residential (RD) Zoning District to the Urban Commercial (CU) Zoning District.**

The Board postponed this hearing to the continued meeting on October 5, 2011.

11. **Consideration of a Development of Regional Impact in the Town of Pembroke for a Major Site Plan and Special Use Permit – Aquifer, for F.L. Merrill Construction, Inc., at 773-778 Silver Hills Drive. (2011-0040)**

Mr. Henninger stated that in addition to the Planning Staff report, there is a memorandum from Emery & Garrett, the City's groundwater consultant, as well as a memorandum from the City's Engineering Division. The transportation comments in the reports are similar to the comments from the Planning Board in 2009. Emery & Garrett feels that this project has the potential to be developed without any adverse impact on the Concord well field in Pembroke, but they have requested additional information and clarification from the applicant regarding the potential impacts. One of the recommendations from the Planning staff is to request the information and allow for further review and comment by the City's consultant and the Planning staff.

Mr. Gross stated that in cases of Development of Regional Impact, the Planning Board is invited by a neighboring community to comment on a land use matter pending before their land use regulation board. He stated that what the Concord Planning Board says doesn't necessarily rule the day, but we have the right to be heard.

Mr. Henninger stated that the City of Concord has a long history of commenting back and forth with developments along the Pembroke / Concord shared aquifer, and in this instance, the Director of the Pembroke Water Works was quite adamant that the City of Concord be involved.

The Chair stated that the rapport with the Town of Pembroke has improved. Mr. Gross stated that as a matter of background, when Pembroke came to the City of Concord requesting us to protect their well field, we did, which he feels improved the relationship between our communities a lot.

Mr. Gross moved to authorize the Planning staff to write a letter to the Town of Pembroke outlining Recommendations 1, 2, 3, 5, 6, 7, and 8 of the Planning staff, attaching the reports of the City's Engineering Division and consultant. Ms. Smith Meyer seconded. Motion carried.

### Old Business

#### **12. Further consideration of applications for approval of developments on which public hearings have previously been held:**

- a. Request to extend approval of a previously approved minor subdivision until August 18, 2012, pursuant to Section 9.08 (8) Expiration of Approval, of the Subdivision Regulations for an application by RJ Moreau Communities, LLC, and the Derosa Trust on Kyle Road and Cabernet Drive. (2010-0033)**

Mr. Henninger stated that the Planning Board granted conditional final subdivision approval on August 18, 2010, for this project. He explained that this application was one of two minor subdivision plans that remain that have not been executed; these two subdivisions were approved for one year, while now all minor subdivision approvals are good for two years under the current regulations.

Mr. Gross moved approval of the extension of a previously approved minor subdivision until August 18, 2012. Ms. Smith Meyer seconded. Motion carried.

- b. Request to extend approval of a previously approved minor subdivision until August 18, 2012, pursuant to Section 9.08 (8) Expiration of Approval, of the Subdivision Regulations for an application by Madlyn F. Whipple and Una M. Folan at 240 and 246 Hopkinton Road. (2010-0034)**

Mr. Henninger stated that the Planning Board granted conditional final subdivision approval on August 18, 2010, for this project. He explained that this application was one of two minor subdivision plans that remain that have not been executed; these two subdivisions were approved for one year, while now all minor subdivision approvals are good for two years under the current regulations.

Mr. Gross moved approval of the extension of a previously approved minor subdivision until August 18, 2012. Ms. Smith Meyer seconded. Motion carried.

**c. Request by Concord Housing Authority for revisions to a previously granted Architectural Design Review approval for a building under construction at 23 Green Street. (2010-0047)**

Ms. Hebert explained that the Concord Housing Authority received site plan approval to construct a new office building at 23 Green Street, and the color of the building was to be a greenish tint with a beige/yellow siding. At the time, they were planning to use a Hardiplank siding and paint the structure a greenish color. In order to bring down the cost of the building, they switched the siding type from the Hardiplank, which is paintable, to a vinyl siding and also changed the color to beige.

Mr. Henninger stated that the Architectural Design Review Committee reviewed the change and recommended approval of the revisions.

Ms. McClure moved approval for revisions to a previously granted Architectural Design Review approval for a building under construction at 23 Green Street. Ms. Smith Meyer seconded. Motion carried.

**13. Continuation of the review of the Site Plan Regulations including a communication from the Heritage Commission with regard to the draft regulations, and a response to the Heritage Commission's comments from the Deputy City Manager – Development, together with excerpts from the draft regulations related to historic preservation.**

The Board postponed this hearing to the continued meeting on October 5, 2011.

There was no further business to come before the Board and the meeting adjourned at 11:10 p.m.

A TRUE RECORD ATTEST:

Stephen L. Henninger,  
Acting Clerk

djm